

Docket No. 193,229

Respondent appeals from an October 26, 1994 Preliminary Order which grants claimant's request for medical benefits.

The issue on appeal is whether claimant has established by a preponderance of the credible evidence that the injury to her shoulder arose out of and in the course of her employment.

After reviewing the record and considering the arguments of the parties, the Appeals Board finds claimant has not established by a preponderance of the credible evidence that her shoulder injury arose out of and in the course of her employment. Accordingly, the Preliminary Order entered by Administrative Law Judge John D. Clark, dated October 26, 1994, is reversed.

The evidence establishes, and respondent does not deny, claimant met with personal injury by accident arising out of and in the course of her employment on January 19, 1994. The dispute concerns whether claimant's shoulder was injured in the January 19, 1994 accident or a subsequent accident not related to work. The January 1994 injury occurred when claimant fell in respondent's parking lot. She was treated at St. Luke's Hospital in Wellington, Kansas, and x-rays taken at that time revealed a fracture of the radial head of the left humerus. Nothing in the initial emergency room records indicates claimant complained of, or that medical examination revealed, injury to claimant's shoulder. Claimant was thereafter treated by Dr. Naldoza. Dr. Naldoza saw her on at least three subsequent occasions and Dr. Naldoza's records do not reflect examination or treatment for shoulder complaints.

Claimant did not seek medical attention for her shoulder until she visited the emergency room of Wesley Medical Center on July 8, 1994. Although the Wesley records

make reference to a fall on the shoulder, the primary history indicates claimant experienced pain to her left shoulder and radiating down into her neck when a heavy wind blew her car door open. The records reflect she felt something snap at the time. Claimant was subsequently referred to Dr. Eyster. Dr. Eyster performed surgery to the shoulder.

Claimant testified that her shoulder bothered her from the time of her injury in January 1994. However, the medical records do not reflect treatment for or complaint regarding the shoulder prior to the emergency room visit in July 1994. Although her testimony attempts to minimize the significance of the incident involving her car door, it appears from the records that this incident probably or most likely was the cause of the complaints which led to her surgery. The Appeals Board finds this incident constituted a separate intervening accident. This accident did not arise out of and in the course of her employment and benefits should, therefore, be denied.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark, dated October 26, 1994, should be, and the same is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of December, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Russell B. Cranmer, Wichita, KS
Stephen A. McManus, Kansas City, KS
John D. Clark, Administrative Law Judge
George Gomez, Director